

BOARD OF ZONING APPEALS

Minutes

January 26, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on January 26, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: RANDY PHILLIPS, FLOYD PITTS, JOHN ROGERS, and JUANITA SWANN. KEITH ALTER, BICKLEY FOSTER, and DOUG MALONE were absent.

The following Planning Department staff members were present: Secretary, DAVID YEAROUT, and Recording Secretary, ROSE SIMMERING.

Also present were J. R. COX, Office of Central Inspection and SHARON DICKGRAFE, Law Department.

The First Vice-President FLOYD PITTS, called the regular meeting of the Board of Zoning Appeals to order at 1:30 p.m.

It was recognized that there were 4 voting members present which establishes a quorum.

PITTS: Do we have any minutes from last meeting to review.

YEAROUT: No Mr. Chairman, we do not. We are behind in getting the minutes up to date, we have some turn over in secretary as you know, that is high on the agenda of things to get done.

PITTS: Thank you, I appreciate it.

1. Case No. BZA, 25-98, pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to increase the height of the permitted pole sign from 25 feet to 50 feet on property zoned "LC" Limited Commercial legally described as follows:

All of the existing improvements situated on Lots 1, 3 and 4, The South Main Plaza, Wichita, Kansas, Sedgwick County, Kansas, and Lot 2, except beginning at the Northwest corner thereof; thence South along the West line of said Lot 2, 42.25 feet; thence East parallel with the North line of said Lot 2, 20 feet; thence South parallel with the West line of said Lot 2, 152.7 feet to a point 26.35 feet North of the South line of said Lot 2; thence East

parallel with the South line of said Lot 2, 146.18 feet to the East line thereof; thence North along the East line of said Lot 2, 197.69 feet to the Northeast corner thereof; thence West 149.51 feet to beginning, the South Main Plaza, Wichita, Kansas, Sedgwick County, Kansas. Generally located at Orme and Main (120 West Orme.)

YEAROUT: Reviewed the comments from the Secretary's Report and presented slides of the area.

CASE NUMBER: BZA 25-98

OWNER/APPLICANT: Wichita Residence Associates (Owner)

AGENT: Judy Manka, Luminous Neon, Inc. (Agent)

REQUEST: Variance to increase the height
of the permitted pole sign from 25 feet to 50 feet

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: 2.18 acres

LOCATION: 120 West Orme, generally at the
southwest corner of Main Street and the exit ramp of
Kellogg

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is the owner of the Cambridge Suites by Candlewood, which is located on the property in question. There is an existing pole sign along the north side of the property advertising Cambridge Suites constructed to 30 feet height. Under the terms of the Sign Code, it is possible to increase this sign to 35 feet in height, provided no other sign is erected along that frontage.

The applicant is requesting a variance to allow the sign to be increased in height to 50 feet above grade, which is approximately the same height at the flag pole to the east of the property. The proposed sign is approximately 270 square feet in size (measured by taking the maximum width by the maximum height of the sign), and will be 50 feet in height above grade at the top of the sign. The sign will be internally lit, and will have the color scheme and design of the Cambridge Suites logo.

The applicant states in the supporting documentation that the existing pole sign is not

visible from Kellogg in enough time to permit travelers to exit in time. The appropriate exit for eastbound traffic on Kellogg is the Main Street exit adjoining this property. The appropriate exit for westbound traffic is the “downtown” exit that is east of Emporia and provides at-grade access from Emporia to Main Street.

ADJACENT ZONING AND LAND USE:

NORTH	“LC and “CBD” - Kellogg/US 54 “Flyover”
SOUTH	“GO” and “B” - Multi-Family Residences
EAST	“LC” and “B” - Vacant
WEST	“B” - Single-Family Residences and Apartments

UNIQUENESS: It is the opinion of staff that the conditions on this property are not unique as virtually all of the commercial properties in the “downtown” area off the Kellogg flyover are similarly situated. With only one exit opportunity for each direction of traffic the signage needed to identify each exit as the appropriate one for this and all other commercial properties is an off-site sign placed far in advance of the appropriate exits. Logo signs are available through KDOT to provide notice to the traveling public in advance of the appropriate exit.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested may not adversely affect the rights of adjacent property owners, but that it would establish a precedent that could result in an increase of variance requests in this general area. Some property owners may not receive approval which would be construed as having an adverse affect on those property owners.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Sign Code and Unified Zoning Code do not constitute an unnecessary hardship upon the applicant and if changes are needed they should be addressed in another fashion.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would adversely affect the public interest in that it would lead to numerous other similar requests and would significantly alter the appearance of this section of the Kellogg flyover and the entryway into the downtown area.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would be opposed to the general spirit and intent of the Sign Code and the Unified Zoning Code in establishing a new “standard” for the downtown area that should be addressed in another manner if the need to make such a change is warranted.

RECOMMENDATION: It is the opinion of staff that the conditions on this property do not support the requested variance and it is staff’s recommendation the variance be

DENIED. In the staff's opinion, to assume that raising the signs will solve the "problem" is erroneous because we feel that in order to achieve the results desired the sign would need to be significantly higher and larger than proposed. This goes against the spirit and intent of the Sign Code and the general development "policies" allowing signage along this corridor. Further, as noted earlier, logo signage is available from KDOT to resolve this issue much better than granting the variance.

However, should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be subject to the following conditions:

1. The site shall be developed and required to comply with all other building, zoning and landscaping code requirements, except that the single pole sign be permitted to a maximum of 50 feet as shown on the site plan and accompanying drawings.
2. The applicant shall obtain all permits necessary to construct the signs and the signs shall be erected within one year of the issuance of the sign permits in accordance with this BZA resolution, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

PITTS: Any questions of Staff?

PHILLIPS: As far as the adjustments that you are talking about, are you talking about trying to revise the codes to include specific dialogue pertaining to the flyover areas or talking about administrative adjustments for this specific instance?

YEAROUT: The details of how we would do that have yet to be identified this is as I recall, Marvin telling me that there was a previous case for Spangles downtown, that was requesting a elevation of their poles sign before I came a couple of years ago and it was denied. That may have been before some of the issues out west brought it to a head out there. Whether or not that it would be something that would be by right or whether it would take administrative approval, that yet has to be determined. But, the feeling is that if there is a need to address the issues of signage along this section of the flyover it ought to be addressed in for all the business in that area rather than taking them on one by one, piece by piece basis. Try to deal with the question in that approach. We struggle with this, but it is were we ended up. Mainly because as we state in the staff report, asking to go to 50 feet we really do not believe 50 feet is going to achieve what they are after. If the expectation is that it is going to give the ability for someone far enough back to see to be able to slow down, get in the appropriate lane to

exit, we do not think it is going to work. Because you simply for eastbound traffic this sign here at 50 feet that flag pole is not available until you are just about right here. If you are a highway speed and you are not in that right hand lane and you are trying to make that exit that is a dangerous situation. The feeling is that this is not solving their problem.

PITTS: In other words, you feel a person would have to know where they were going to make that exit anyhow.

YEAROUT: Yes. It is a difficult problem and we understand that, we are willing to see what might be the best solution, not only for this property owner but for all of them down there. But a 50 foot sign here we do not believe is going to solve the problem that they are trying to achieve. The feeling is it is just not going to get there.

PITTS: Any additional questions for staff?

PHILLIPS: Maybe this is something for the applicant. Any idea roughly where the property line becomes adjacent to the ramp? What is the basic height of the ramp there as you descend? Or relative heights of the flyover?

YEAROUT: I do not have that information with me but it is possible to determine what that is, it is just not available here. I do not whether they have any of that information with them or not. It is something we could find out.

PHILLIPS: I just wonder if it is available.

PITTS: We will listen to the applicant. I may inform you I believe it requires a four vote to either go up or down on this application. We are short three members and we only have four here, so if that be the case we would all be in agreement to either approve or oppose it. It is my understanding that say 3-1 vote it is as if it did not come before the board.

DICKGRAFE: It would have to be brought back up then again on next months agenda that is correct.

PITTS: With that, the applicant may proceed.

JUDY MANKA, LUMINOUS NEON SIGN COMPANY FROM HUTCHINSON, AND GREG KOSOVER WORK FOR THE OWNER OF THE PROPERTY THE OWNER OF THE PROPERTY IS WICHITA RESIDENCE ASSOCIATES THAT IS A COMPANY THAT IS WHOLE OWNED BY JACK DEBOUR,

Let me, I know sometimes these pictures are to see and Dave you did very good work. Actually I took mine through the windshield but I think these photos especially on the last page maybe will give you even a clearer view of the approach process. Away from microphone. We are certainly think that we are in somewhat of an agreement with Dave, we would love to see that sign go to 60 feet tall which is the approximate height of the flag. We did not think that we dare even suggest that possibility to the city. We feel like 50 feet will give you an opportunity to begin to see that sign in time to exit. From where Dave took the pictures which would be clear over to the south side, past the roadway area, I do not think that his line of vision was quite the same as it would be for a car traveling in either the outside lane or the one just adjacent to it. I think you can tell if you will look at that top picture there you can see where that flag pole is located, just to the right hand side of where that exit sign is. It is our feeling that if that is about 60 feet tall then a sign 50 feet tall is going to be visible certainly at that point you would still have an opportunity and I was in the exit lane if I were in the inside lane my view going across would be even better I think of that flag pole then being in the outside lane and would therefore give me an opportunity to maybe even exit into that south lane. If I was already in the south lane, then it would I think it would defiantly would verify the fact that is where I needed to exit as I got closer to that exit ramp. I am just barely on the exit ramp in that second picture done which you can see than once you are actually on the exit ramp, you can even see the existing sign, but you do not see it until you have already have entered onto the ramp. The bottom picture again shows coming from the east, so you are westbound. Certainly the city has allowed some very tall, large structure in that area advertising structures. As Dave pointed out they are on both sides of the road now. This obviously is going to be a much smaller sign then the 14 X 48 signs that you see there that have already been allowed. If you will notice the position of the flag in that picture, I think you can also visualize that if you would start at where the bottom of the flag was and assume that is the top of your sign, the sign should be visible and give you some opportunity even if did not see it in time to exit you at least would have a much better opportunity to know that is where the property is located. Make the appropriate turn and come back to it. I think that the people with Cambridge Suites feel like the majority of their clientele and Greg will address this in a minute, probably are going to be east bound coming from the west perhaps from the airport. So they are more concerned I think about eastbound traffic than they are about westbound traffic at this point. I certainly respect the fact that if this is approved yes it is going to open up the situation where you are going to have other downtown businesses apply for similar types of signs. You can look perhaps at changing the code, I can not believe that the code is going to allow any signs that are taller. Certainly, than 50 feet so I do not know that is either going to correct the situation it would almost seem to me, and this is just my opinion having been in the sign business for a long time that, it needs to be looked at in a case by case situation. Cambridge Suites is almost entirely dependant upon out of town travelers many of the other businesses in that particular area are much more likely to be frequented by local people than they are even by out of town travelers. But in the situation with Cambridge

Suites that is what there sole support comes from. So those are just some of the issues that we have looked at as Dave mentioned the highway signs are there, the approach signs that he showed you a picture of I thought that it was interesting that in the staff report initially they suggested that might be something that Cambridge Suites could pursue which kind of said to us that even they had not noticed that they were already there and I will admit that when I was first looking at the sign situation I drove back and forth about four times before I finally saw that sign. I think part of it is because you are used to looking for those more on an interstate highway then you are as you get close in. The other thing is that if you happen to be not in the outside lane traffic the traffic that is in the outside lane is going to be sure a good portion of that sign anyway. So those and that is in our attempt maybe to address some of the things perhaps that staff took a look at.

GREG KOSSOVER: I work for Jack Debour he is the owner of the property. Dave I respect your report today. It is a difficult issue and we respect what the board has to contend with because it could raise the issue for other businesses to come back and request what we are requesting. One thing to note, from an owner perspective not only is the height of the sign important for people getting off the highway, right now it is very difficult for any transcendent travelers coming through that do not know that there is a hotel there to know that we exist. So any advantage that we could get would be good. In the staffing report there are four or five points that I would like to address. First of all the uniqueness. It says that it is the opinion of the staff that the conditions of this property are not unique as virtually all the commercial properties in the downtown area off the Kellogg flyover, are similarly situated. Although that may be true, lodging is at a premium in Wichita, Kansas right now. Jack Devour spent, this was the very first Residence Inn and in the last two years we have spent in excess of 1.7 million dollars cash renovating this property, buying the restaurant that was on the corner lot of Main and the flyover. We have demolished the building we cleaned up the corner and we have created 64 high quality rooms for Wichita. So we do not feel that this is typical of the businesses in that area. We are reliant on people coming to Wichita, driving through Wichita who are not only looking for the hotel, knowing that it is there but who may not even know it exist. A second bullet point by the staff, was on the adjacent property that this would establish a precedence that could result in an increase of request in the general area. This I think has some validated I think this does raise the issue, it is a very difficult issue. Again now with the family inns being in jeopardy down there if not already in default. This is a hotel that provides 64 premium rooms and the other business on the south side of the flyover in this particular area can not say that. And then another point made by the staff was the hardship that the sign code and the unified zoning code do not constitute an unnecessary hardship upon the applicant. We disagree with that. It does cause a hardship on us. This used to be the Residence Inn and people who had stayed at the Residence Inn knew where it was and knew what it was. This is not the case anymore. WE have a hotel that is above the standards a Residence Inn and as one of the handful of properties in downtown Wichita that can truly say that it provides upscale lodging for use by Learjet, Cessna, Boeing, and

downtown merchants. Finally there is a public interest commit in the staff report that says this would significantly alter the appearance of this section of Kellogg and the flyover. I would contend that first of all that it is on the south side of the flyover and secondly, there is already signage there in the case of the billboard. This is not a perfect solution but it certainly much better than what we have now. WE did go to the CPO Council number 6 meeting two weeks ago tomorrow, we did get an unanimous approval for this variance and the general reason for that is because of the investment that the owner has already made in the property not just in the hotel but also on the corner. For us to continue for us to make that type of investment, we need every advantage that we can get and one of those is getting this sign raised. That is about all I got. Question.

MANKA: One other thing I might mention, if you look on the second page there it does shows the signs that Dave referenced at Kellogg and West street. Not only are those signs at a height of 50 feet but they are considerably larger now. One of the things that it said in the report which has changed is that the cabinet that is now in existence at Cambridge Suites will stay at that size. It said something in there and we did submit an earlier drawing that showed the cabinet at two hundred a seventy square feet. The existing cabinet is a hundred a five square feet and it will remain at that size. As you can see from these signs that are out on west street not only are they 50 feet tall but they are again considerably more than twice the size of what we are talking about for the Cambridge Suite sign. So I think we do respect that the fact that the downtown area is a different situation and perhaps in that quart area you do want to keep the view as open as possible. But still allow those people who have invested in that downtown area to have appropriate advertising. So that is basically what we are asking for.

PITTS: I might the two of you that in making our decision we have to address all five condition. If I miss the spirit and intent did you cover that at all?

KOSSOVER: No but I can. I did read the spirit and intent of the sign code and the two points that I focused on where the safety issue. Which we think this does make it a safer environment. Because it is an affirmative response. If a person know they are going to get off at that exit and they see the sign they know that they have made the right decision. Secondly, there is a clause in the spirit and intent, that refers something to the effect of harmonious to the business. We obviously feel that this would harmonious to our business and would not be offensive towards the downtown area. So yes we do feel we have an argument under the spirit and intent of the sign code.

PITTS: Thank you very much I appreciate your presentation. Are there any questions of the applicant?

PHILLIPS: I have a couple of comments that just may help a little bit. From the boards standpoint. Case and point, you have got the second sheet that shows the three individual signs. Recall these cases the GMC, Sauder Lycryess, the sign was there

before the flyover it was established at that height. Willie C if I am not mistaken just slipped in under the wire on that one. It may have been a variance on that but it was very early, in fact I think it was before the flyover was completed. The Hampton there was a variance attached to that. But they did not get everything that they wanted. There was some compromise on that. I think even a little on the Willie C. The Sauder Lycresse if I remember right is probably the tallest one out there and that was pre-existing way before any of the sign ordinance where in effect. Is that right J.R.?

COX: That is my understanding yes.

MANKA: Truly, in this case I do not feel like Cambridge Suites is probably getting everything that they want either. Because very honestly that first design at that 270 square feet is what they would have preferred to do and recognize that would be in the interest of compromising if they drop back and said they would use the existing sign.

PITTS: Any additional question of the applicant?

PHILLIPS: Location of the sign? Is it going to remain where it is? As the same exact kind of pole sign?

MANKA: It will have to be moved a little bit to the north or south but basically yes Randy in the very same location. I said north or south I meant east or west.

PITTS: If there are no other questions of the applicant we will confine our discussion to the bench.

ROGERS: Mr. Chairman, I do not have a site plan except for what is shown on the very front page. Here it is.

PITTS: I would like to go back to that step on precedent. Did we deny Spangles request for an increase in sign height? I remember that we had quite a discussion on that?

YEAROUT: I was not here. According to what I have recall Mr. Krout saying that it was denied. I did not pull the case to be able to give you a verbatim to the rational but it was not approved.

PHILLIPS: There was several other cases that actually applied to this as well. Best Western further out basically at Ridge Road.

PITTS: We approved Wichita Inn sign but we did not give them all that they asked for.

PHILLIPS: I think that was based on the approximate height of adjacent signs we used and I think we took the maximum adjacent sign there. From my stand point I agree that

this is a tough situation. It was preexisting and the flyover was built there. They do have a great product. I drive by there every single day. I am like David, you have to be on that right side to make that exit. Basically three or four times a day you have to be in the right lane by the time you hit Seneca to be able to get over there. It gets to be a little bit of a tricking maneuver even to get from right hand to the turn lane. Better signage does help but the thing is you have to be up a river to be able to know where that is even if you are looking for a sign. I have gone through this thing and I think the first four items I can justify that. I think the spirit and intent is maybe where I have a little trouble there because there is a can of worms sitting here, literally. I am not talking about the downtown core but I mean we have Ridge Road the flyover and if anything else comes up I think we could literally have a domino effect here. In light of the fact there is four of us here today, and it is denied or approved one form or the other, there is an additional venue for the applicant. I do not know if this is sounding negative or anything, but I think maybe this is an example where this staff input there may need something addressed in an longer term basis. Maybe this is the spirit of that. I am hesitant a little bit because of the fact as the applicant said, 50 feet may or may not do it and allowing this thing we may open up something that may not solve their problems but creates longer term problems for us or for other businesses. I think this is truly one of the tougher ones that we have had. For me I have had a pretty clear cut thought on where I was going to go with this but I could probably go one way or the other with thing except for the fact that looking back at what we have done and having been familiar with the site as well as the approach to the site. I am just wondering really if we might pull this and work directly with the staff. That is why I was asking about the Administrative adjustment, that may be a quicker route. I know you do not want to wait for the sign ordinance to be revised. I think for us at this point is truly dangerous. I just remember all the ones we have been through we have had some pretty strong arguments and some pretty heated discussions here. I think one vote like this today we could be rehearing every single one of those. Maybe if this one is approved and staff sees that right to go ahead and provide something different to be able to account for that, I do not know. I guess my biggest problem is I am not sure 50 feet is going to solve your problem.

MANKA: We did pursue and Administrative Adjustment first and we were told that was not the avenue to use that the variance was the vehicle to use for this. Certainly, I think and I hope that I am not speaking out of turn on behalf of our client. We would be very interested in hearing what the city would propose for that downtown area. But I know in similar types of situations in other cities where you have had an interstate situation and you have had elevated roadways that there are special dispensation given to the businesses along those roadways. Yes I do respect the fact that it does indeed open up a can of worms. But again I do not think that ever business in that downtown core area, is reliant on travelers who do not know the area to the same extent that Cambridge Suites is. Does it totally solve their problem? No it does not totally sole the problem. We would love to put the sign 60 feet in the air and move it farther to the north. I think that would solve their problem or remove the advertising

bulletins that are along the roadway already. That already cover 14 X 48 foot space of area in that same locale. We think that this is a reasonable request. We started out at 270 square feet, 50 feet overall height, we talked about going to 60 and thought that was extreme and felt like this is something that they could live with which as Greg said. Is it a total cure? No but is it a compromise, Yes. We feel like it is a compromise. At a 105 square feet this is not a massive sign we understand that. It is not going to be seen from half a mile back anyway but we do feel like it gives people the opportunity as they approach to know that they are going to have to exit to the right and if they are in the right hand lane it becomes easier if they were in the lane adjacent to it I still think it is possible.

PHILLIPS: I think coming from the east going west I think it would have an impact. Where I think, 50 feet in this case is not nearly enough to give you enough time coming from the west going east. I think that is my biggest concern on this thing. I have several occasion in there where I have known where I was going and hopefully the people getting off or getting on it was treacherous to say the least. I am not saying this would be a problem or anything. I think the request to be real honest is <> result.

MANKA: Let me ask you this. Would a sign a 60 feet sign their problem? I do not say that to be funny. But very honestly, they would love to put it at 60 feet tall.

PHILLIPS: But you have to understand that this board is not here to provide a better advantage or to solve the problems from the business stand point. Whether you can compete with you neighbors or not. What we are to do is to consider basically the request in hand. How that impacts your business is really is not our job. The fact that we are not even suppose to regard that as the process or part of our decision making.

PITTS: The existing sign is how large? How may square feet?

MANKA: 105 square feet.

PITTS: And you are proposing going to 270?

MANKA: No, originally that was a part of the proposal which we did take out of the proposal. It will be the same sign at 105 square feet.

PHILLIPS: Maybe I am getting off here. Because I know we were kind of trying to talk here among the board members but I do think it is good to kind of maintain the dialogue with the applicant. How long is the facility been here at this location?

KOSSOVER: Since 1975.

PHILLIPS: When did the flyover go in?

COX: I think the flyover opened in 1994.

MANKA: I think it was after that.

KOSSOVER: I would like to interject one thing if I may. One of the issues is the height of the sign and how effective will that be for people that know that the hotel was there. Raising this to 50 feet does do two other things. It very clearly makes those who do not know that there is a hotel there, it allows them to know that is the case for people driving through. And secondly, it makes it easier for people who are coming to Wichita to go to downtown to the convention center or for other reason it makes it easier for them to find the hotel. Again it is an affirmative response if they are already in that lane and one of the things that we have done as owners and this is not giving us a competitive advantage one way or the other, but we have offered to Wichita by renovating this property 64 premium rooms. Basically in downtown or right next to downtown and it does make it easier and less frustrating for our guests who are often times guests of Wichita almost to be less frustrating people when they come to town.

PITTS: I wish there was some way we could accommodate a long standing business and business person without violating the spirit and intent of what we are trying to do and without opening up this proverbial can of worms.

SWANN: What was the hotel or motel out there by across of Walmart that raised their sign?

DICKGRAFE: I do not think that was raised to 50 I think it was raised to 38.

PHILLIPS: The Wichita Inn. That is the one that they were basically requesting much greater height than we allowed. We allowed it based on the average of the height of the adjacent sign. I am not opposed to doing something like that. If we knew what some of the other signs were down there. Again, you got an applicant that says basically 50 feet might not do it with what they are needing they would rather have 60. What I am hearing change for change sake. Which is not to me a great basis for an argument. It is a difficult situation my preference would be to tell you the truth is that the applicant would defer this project for a least 30 days to get more feed back from staff to see if there is another route to go. If they were told to come this route for the variance, I can understand that. But I think it is one of things that we are starting to struggle with as we see more and more improvement of some of the businesses that are recovering or going back into the core area over along the flyover areas. It is a little bit like the ATM cases. We had some many of those, and we had so many of the tire cases now they are starting to be seen and approved in it's entirety rather than a piece at a time. If they want a vote, we can entertain a vote.

MANKA: Can we ask a question? I guess acknowledging what you were suggesting Randy, as far as working with the city on this. I do not think that Cambridge Suites is opposed to that kind of situation at all. If in fact this can be worked out in such a way

that it does not perhaps take another year to do it because they are concerned obviously about the hardship. But, if the vote occurs today, and they are denied that is that still an avenue?

PHILLIPS: Today's vote is not binding. Because of the fact that you have to have a majority of the Board which is seven members you have to have four to approve or deny. If you get an 4-0 vote, any sort of split vote basically does bring it back automatically. It is still a role of the dice. It is up to you. What I am hearing is staff offering something that may eliminate having to be here, or if you have the opportunity to have more boards members here you may get more infinite vote.

DICKGRAFE: Randy, I do not think they can get an Administrative Adjustment of the sign code. I think they can clearly get one if it were a zoning issue but this is the sign code and it is a different animal.

PHILLIPS: That is why I was asking the question early.

YEAROUT: Mr. Chairman, if I could there has been some questions raised relatively to the height of the flyover, the height of the existing signs that are presently down in that area. I am not saying that the staff in a position to change its recommendation on based on what we know now. But if you feel it is appropriate to have a little more information in front of you as well as the opportunity perhaps for some other board members to participate in the dialogue on this, I am not sure that a months carry over is going to be fatal one way or the other. Particularly given the alternative of the denial is either challenge the decision the board in court or wait until they can put a presentation together within the time frames and come back on another request for a variance.

PHILLIPS: Maybe I was just kind of thinking. Was thinking back on the past, cases that we have had before. We have had some information on adjacent signage. I think that maybe with some of that information it might be helpful to say. Well for instance we have mentioned the Wichita Inn sign. They were granted an increase and I do not remember how much it was, 25 to 38 feet it was not what they wanted but it was significant amount but it did help and it was based on adjacent signs. We did not go above any of those so that we did not feel like there was a war or caused any concern of anything coming back on us or having any sort of major changes. From my stand point I think I could make a better vote if I knew what some of the adjacent signs were down there because I really thought there might be something in there that for whatever the hotel was down the street what there sign was. We did have that information before. I really think I can make a better decision. I am really struggling with this.

PITTS: What we are saying here is that we allowed the signs of the Hampton Inn to go to approximately 50 feet.

PHILLIPS: Those are not adjacent those. I think for me if we had some additional

information it might help us from the stand point of the board to kind of know relatively what is in the area. That is speaking for myself.

MANKA: Would you consider the advertising bulletin to be adjacent signage?

PHILLIPS: I have a hard time with that because of the change.

KOSSOVER: Meaning that the paper changes or the sign itself changes?

PHILLIPS: The advertising changes. That does change occasionally, depending what their contract is and how that is sold and whatever. It is own by a sign company that changes those things out if I am not mistaken.

MANKA: Yes that is correct.

PHILLIPS: This is a permanent sign, it is going to be there. I just think, if it is not a inconvenience to the applicant, I think maybe I would feel more comfortable with a little more additional information.

KOSSOVER: What may we provide you with?

PHILLIPS: It may come from staff more than anything. What are some of the other sign heights down there? What is the height of the ramp? That kind of information.

DICKGRAFE: Randy, I think the board can make a motion to differ that and ask staff to get them that information. There is a hotel sign that is north of Kellogg, and I do not have any idea how tall that sign is and the Spangle sign and there is other signage in the area.

PITTS: We could here a motion for deferring this item unless there is some opposition from the applicant.

KOSSOVER: There is no opposition from us. We would like for you all to make an informed decision as you may.

MOTION: PHILLIPS moved and ROGERS seconded, That we differ the case until the next hearing. At which time that would give staff enough time to provide additional information we talked about relating to additional signage in the area, as well as height of the flyover, and traffic counts at that point. Differ for 30 days.

Motion approved 4-0.

2. Case No. BZA , 29-98, pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to allow a carport into front yard to within 8 feet of property line on property zoned "SF" Single-Family legally described as follows:

The East 14.8 feet of Lot 2 and the West 44.4 feet of Lot 3, Block 12, Rainbow 1st Addition, an Addition to Sedgwick County, Kansas. Generally located south of 31st Street South and west of Hydraulic(1315 Catalina.)

YEAROUT: reviewed the comments from the Secretary's Report and presented slides of the area.

CASE NUMBER: BZA 29-98

OWNER/APPLICANT: Larry G. Boden, Jr. (Owner)

REQUEST: Variance to allow placement of a carport into the front yard to within 8 feet of the property line

CURRENT ZONING: "SF-6" Single-Family Residential

SITE SIZE: 5,920 square feet (59.2' x 100')

LOCATION: 1315 Catalina, generally south of 31st Street South and west of Hydraulic

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant hired American Home Exteriors to construct a two-car carport onto the front of his home. The desire was to provide shelter for the vehicles parked in the driveway, previously without benefit of any such shelter. There is a single-car attached garage on the home, but the owner has more vehicles than one and wishes to provide some shelter. The lot in question is relatively narrow and there is no room on either side of the residence to allow access to the rear of the property. Further, there is no alley access to these lots.

The carport is already constructed. Because of the design of these particular carports, the construction time is very short and the structure was completed before Central

Inspection was able to inform the owner of the setback problems. However, this situation does allow the City to view the effects of the carport in this location in relationship to surrounding properties.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-6" - Single-family residences
SOUTH	"SF-6" - Single-family residences
EAST	"SF-6" - Single-family residences
WEST	"SF-6" - Single-family residences

UNIQUENESS: It is the opinion of staff that this property is somewhat unique inasmuch as it is a narrow lot with no room to construct the carport on the side of the property or to gain access to the rear yard for construction of vehicle shelters at that location. While this is generally typical of the neighborhood, it is not common throughout the city.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the carport is relatively unobtrusive, blends in with the character of the neighborhood and was constructed to be compatible with the existing home on this lot. The open design of the carport makes the parking of the vehicles the most prominent impact, which is the existing condition on virtually all properties in the area where most vehicles are parked in the driveways in the open.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code may constitute an unnecessary hardship upon the applicant inasmuch as the owner's ability to provide protected parking for his vehicles is otherwise available.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as no public right-of-way or easements are affected by the reduction of this setback.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the Unified Zoning Code inasmuch as open design of the carport will not be detrimental to nor affect the light, air and pedestrian circulation between structures on adjacent properties.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to allow a carport into the front yard to within 8 feet of the property line be granted, subject to the following conditions:

1. The site shall be developed and required to comply with all building and zoning requirements, except that the front yard setback shall be reduced to permit the carport to be within 8 feet of the front property line. This variance is for the unenclosed, two-car carport structure that exists on the property and does not permit further structural encroachments into the front yard setback.
2. The carport shall be maintained as currently exists, which shall be with a color pattern compatible with the exterior color of the main dwelling on this site.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

PITTS: What is separating those two stalls?

YEAROUT: The structural support themselves. Pole supports in the middle. Just a single pole.

PITTS: Right, that is not a wall.

YEAROUT: Correct.

PITTS: Question for staff?

APPLICANT - LARRY BODEN JR.: The owner of home. Basically I just wanted a car port to keep the weather and the elements off of my vehicles. I have more than one vehicle I have a smaller car that is in the garage right now. Another vehicle that is park outside but is gone right now - when this picture was taken it was gone. That is basically what I wanted to keep the hail the rain, snow, ice off my vehicles that I was parking outside. I did not want to park them on the street because of the traffic coming down the street. There have been incidences that other people have gotten their cars side-swiped, hit-run, or the driver will actually stop. But you still got damage to your vehicle. I had American Home Exteriors build it for me.

PITTS: Did any neighbors say anything to you? When you built that?

BODEN JR.: No Sir. Well, a couple of them said that it looked real nice.

MAURICE N ROSGA VICE-PRESIDENT GENERAL MANAGER AND MANAGING PARTNER OF AMERICAN HOME EXTERIORS: Probably wondering how something like this happen without a permit? Why did we not catch it? At the time of contract we

did pull permits to do the work and we took it for granted we sent down a copy of the permits. How this all came about just recently another individual on the same street applied for a permit to build a carport. The building inspector Mike Dell brought to our attention about four months ago that we were not in compliance with the yardage on it. This is how the structure got build inadvertently. We thought with the permit being pulled we contract with Mr. Boden Jr. He contracted with my company to do the siding, soften gutters on his home, and also the carport. Mr. Yearout also has a copy of the Engineering. This has been Professional Engineered this structure. You can drive that truck across it. It was brought to the attention these are I beams and capsulated I beams holding the structure up. This truck can drive on this structure and the structure will not give way. Again there is a full set of plans there that meets and exceeds all Bolken 97 building codes which you adhere to here. I happen to be a professional engineering. I did not seal these drawings but they are sealed by a licenced Engineer in the state of Kansas. Which you have a copy of it. We are asking for the set-back also about two blocks away at 2630 South Pattie Street. I did not take a photo of it but I did bring it to Mr. Yearout's attention. That there is another structure which is an A frame that is settled into the front of the house . Which is a more costly affair. My company is praying that you will give of the variance. Because we over \$8,000 dollars in that structure. It is going to adversely affect my company and we are doing quite a bit of business and pulling a lot of permits here in the local Wichita area. I am from the Overland Park area. That is where our corporate office is but we do business in the entire State of Kansas, Texas, as well as Missouri.

PHILLIPS: Do you have a copy of the submittal drawing to this?

ROSGA: Yes.

PHILLIPS: You say that OCI did issue a permit for the construction?

ROSGA: They issued a permit for the siding and roofing. I have a production manager who handles the permits who is an officer of our company. Joe Jacqueline, he was licenced.

PHILLIPS: So what you are saying is that basically that the permit was pulled for siding and roofing?

ROSGA: Yes Sir. Our production manager at the offices thought that the roofing covered that. Unbeknownst. So a year and half. Now this is how long this thing went on. The permit was issued and paid for on June 10, 1997. I think the first time that is was brought to our attention that there was a violation was on November 24, 1998. I think over a year had transpired no complaints, and the customer was using the carport. And it was brought to our attention. We are just trying to bring it into compliance and praying for approval of this matter.

PHILLIPS: What is the setback requirement in this area?

ROSGA: I think it was 16 feet. We measured it again, we turned everything into staff. But we measured.

PHILLIPS: Measured from the center of the street back.

PHILLIPS: What I am asking for is what is the platted building setback from the front yard? Do you have that?

ROSGA: 25 Feet

PHILLIPS: How much of a violation or intrusion into the front yard set back are we?

ROSGA: I think we are around 6 ½ to 7 feet.

ROGERS: Well it would be more than that because if we are going down to 8 feet of the front property line. You are 17 feet.

PHILLIPS: How big is that from the house?

ROSGA: It is 20 feet projection. These are 8 foot spans. There is a beam every 8 feet. As you can see even if the carport was not there the truck sticks out just barely fits underneath the carport. That is how the truck would sit. Things that you require in my opinion, I want to get this thing approved if possible. I do not think this would cause a hardship by any means. To the area. If so nobody had complained about this in the year and half or little over a year that it had been implemented, installed. The only reason it was brought to our attention is the fact that someone else on that street wanted to put one up.

PHILLIPS: How long have you been in construction for structures like this?

ROSGA: My company has been in business 25 years.

PHILLIPS: How long have they been constructing structures like this?

ROSGA: This product right here? 15 years. It is manufactured my 100 million dollar out of Detroit. We are the distributors for them.

PHILLIPS: So in that 15 years have you guys figured out that when you have an addition one way or the other particularly moves to the street or to the side of the property in an area like this that zoning ordinances are in effect? That is probably one of the first things that should be checked is where is the setback. Did you guys not in 15 years have you never checked a setback on a property like this?

ROSGA: To answer your questions. I do busy in the entire State of Kansas and in Texas, Missouri. Each municipal has it own rules. I can show you houses in the Wichita area that goes almost goes all the way to the street with carport covers. Now whether they are in the unincorporated part or in the part of Wichita. Ignorance is no excuse . Again I have a production manager who is suppose to take care of it and when the permit was issued and the permit does say for siding and roofing. That is how it was built.

PHILLIPS: I have been doing business in this area for 20 years. I am a licensed Architect I have licences in 15 other states. One of the first thing we do regardless when we have an addition one thing we do not do is try to put something underneath the permit that does not belong there. Second, if we have something like this we try to make sure that we understand the zoning ordinances and what the setbacks are.

ROSGA: I am not considering into the debate your qualifications or mine. I understand what you are saying. Again I am saying ignorance is no excuse. I did not personally handle this. I have a salesman I employee over 20 salesman that cover a lot of municipalities sir. The structure was built to codes and certified and sealed by a licensed engineer and yes we did not do it appropriately. I was not involved in it. I have a production manager who is suppose to take care of that., I plead ignorance I was not aware of it. I have a company that does 96 million dollars business. It may not mean anything.

PHILLIPS: To the Board of Zoning it does not.

ROSGA: I pay a lot of taxes to the State of Kansas. I employee a lot of people. All I can say is it was just brought to my attention. As soon as it was brought to my attention I addressed it.

PITTS: Any other questions from the applicant?

PHILLIPS: I have some pretty strong feelings on this one. I really hate to see that we got a residence here that has paid a considerable amount money for a structure. I think that we have a company here that did not follow the rules and actually put the homeowner at risk. Now I am not going to vote against this. I think in light of the arguments that have been made, what we have seen in other instances like this. We had one were we actually thought we were going to hear again through the courts, which I will stand and honor the decision on that one. Shortly after that we had another one very similar to this because of the hardship they did get approval. What I have hard time is someone standing here telling me that they have done their due diligence on this thing and they have not. They do not know what the local codes are and they know they have done business and been in business like they have said, that the zoning ordinances in place in almost every municipality. That is one of the first things

that you do. Now I hope that we do not have someone else coming back in here like this and try to apply for something like this after the fact. At least if it is the same company.

PHILLIPS: Mr. Chairmen do we have a CPO report on this?

PITTS: I do not see one.

YEAROUT: Mr. Chairmen I do have a copy of the CPO report. Rose said it came it late and we did not get copies for you. I can go through this real quickly. The Council voted 6-0 to recommend approval of the request. Subject to staff recommendation Judy Dillard reported that Mr. Boden Jr. had called her. Mr. Boden Jr. said that he was not able to attend the meeting because of his work schedule. He explained what had happened and that he was not any happier about the situation anymore than anyone else but they are trying to resolve the issue by applying for the variance. There were no citizen to speak regarding the request. Comments from CPO members Al Alliston stated that he was not disturbed by the request after the construction has already been completed or Nestle Road commented that logic should enter into the situation for a person who is spending money to improve their property. The applicant would make sure what the limitations are prior to the improvements being made. She also added that there have been other instances where applicants have come before CPO after the fact and that although willing to follow the council's wishes it does not agree with people saying they do not what the requirements or limitations were. Jim Skeleton stated that he was in agreement with those with those opinions but the vote was 6-0 to recommend approval.

PHILLIPS: Like I said I have no problem with the request. I have problem with some of the arguments that were made.

PITTS: Chair will entertain a motion to the request.

MOTION: Phillips moved and Swann seconded that the Board accept the findings of fact as set forth in the Secretary's Report, and that the Board find that the five conditions set out in Section 2.12.590.B of the code as necessary for the granting of a variance have been found to exist, and the variance be granted subject to conditions set out in the Secretary's Report.

MOTION carries 4-0.

The official action of the Board is reflected in the adoption of Resolution No. BZA 29-98, which includes the following conditions of approval:

BZA RESOLUTION NO. 29-98

1. The site shall be developed and required to comply with all building and zoning requirements, except that the front yard setback shall be reduced to permit the carport to be within 8 feet of the front property line. This variance is for the unenclosed, two-car carport structure that exists on the property and does not permit further structural encroachments into the front yard setback.
 2. The carport shall be maintained as currently exists, which shall be with a color pattern compatible with the exterior color of the main dwelling on this site.
 3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.
-

ROGERS: Mr. Yearout, regarding this case we just heard just for my information are there any records kept in the department for companies who have made an error and are asking for future permits. Or where a company has put a individual in this type of predicament? Any then they ask for future permits?

YEAROUT: That probably out to be address to OCI. They are the ones that handle the permits and the enforcement into this thing and those kind of issues. These things do come up occasionally. I know that in my two year tenor here, I think this is the third carport case. This one and one other one were both instances were they had been built ahead of the curve so to speak. I do not know, J. R. Is there anything that you have?

COX: To answer your question specifically, probably not as far as doing it again and coming back in and trying to correct it again. The violations themselves Ray Sledge the supervisor in the building section, if they are building a case against a particular contractor they would have the records on it. And that is a possibility but wether or not it get corrected and keeping track of how many times they do that to get it corrected, I do not think so.

ROGERS: Thank You.

3. Case No. BZA , 30-98, pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to allow an A.T.M. within the front setback on property zoned "LC" Limited Commercial legally described as follows:

Lot 1, Marina Lake Addition, an Addition to Sedgwick County, Kansas.
Generally located south of 21st street north and west of Amidon (2005 W. 21st North.)

YEAROUT: reviewed the comments from the Secretary's Report and presented slides of the area.

CASE NUMBER: BZA 30-98

OWNER/APPLICANT: Intrust Bank (Owner)

AGENT: Russ Ewy, Baughman Company, (Agent)

REQUEST: Variance to allow placement of
an ATM in the front yard setback along Amidon

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: 22,500 square feet (lot size), 300
square feet (application area)

LOCATION: 2005 W. 21st St. North, at the
southwest corner of 21st St. North and Amidon

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant has a banking facility at this location and is remodeling the overall site to place a drive-up ATM along the eastern property line. This will entail closing an existing drive entrance from Amidon and modifying the overall parking layout accordingly. The plan shows the ATM placed so that the drive-up service will be from the south. The drive lane will adjoin the property line on the east.

ADJACENT ZONING AND LAND USE:

NORTH	"LC" - Commercial uses
SOUTH	"LC" - Commercial uses
EAST	"LC" - Commercial uses
WEST	"LC" - Commercial uses

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as stand alone ATM's are relatively new banking services. There is no other site on this property which would allow the ATM to be sited in a manner conducive to traffic flow and visibility.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the site is surrounded by other commercial uses in all directions. The ATM should not impact the internal circulation of the bank nor the other commercial uses surrounding the site.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code may constitute an unnecessary hardship upon the applicant inasmuch as the ATM could not be constructed at another location on the site and properly function.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as there will be no encroachments to the street right-of-way nor will the internal traffic circulation of the site be impacted. The ATM will encroach into a platted building setback, but the applicant has begun the process to vacate the setback. Further, the public interest is benefited because the access on Amidon will be closed to accommodate this new facility, which is a benefit to the overall traffic flow in the area.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the Unified Zoning Code inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front yard setback shall be modified on the east side of the property for the placement of an ATM by the 15 foot by 20 foot dimensions shown on the site plan. The ATM shall be constructed in conformance with the site plan approved by the Board of Zoning Appeals.
2. The applicant shall obtain all local permits necessary to construct the ATM and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

PITTS: Any questions of staff?

PHILLIPS: I would like to see the drawing if you have one.

RUSS EWY, BAUGHMAN COMPANY (AGENT), What I have handed out to you is my copies of the site plan and I might just want to note. We have already been through and approved through the subdivision and the MAPC on the vacation of a 35 foot platted building setback. As well as have received approval contingent on this board granting the variance of a C.U.P. Administrative Adjustment to allow the ATM machine to be placed where proposed. Dave did a great job of going over what our request is as well as the fact that I have been before this Board on several different occasions seeking a variance to permit an ATM machine in the front yard setback. I would be more than happy to answer an questions you may have concerning the site plan or the development in general or for that matter. Expound if I could that we are closing a driveway and adding access control for another 50 feet south along Amidion.

PHILLIPS: Can you provide us with some information regarding the relative dimension on here? How wide is your island? How long is the island? How wide of a drive lane here?

EWY: The width of the drive lane is 13 feet. Which is typical. I do not carry a scale with me to tell you what the throat length of that drive through is. It appears to be approximately 50 feet perhaps, it is a 20 scale drawing. I will have you note that on this drawing that has been given.

PHILLIPS: It is about 50 feet long.

EWY: You will note on that drawing that this median here that directs or basically defines the parking area. Mr. Rubsy, the Architect on this project, has proposed to create a dishing out using this existing curve come from this radius bringing a curve along here to form the incrust to that drive lane as well as keeping this curve intact as part of the e-crest. This existing configurational will give you a pretty good idea of the overall length of that drive through facility.

PITTS: Any questions from the applicant?

EWY: Yes we met with the CPO last Wednesday night. This item was discussed in short order and was approved unanimously.

PITTS: I notice that we are going to >< ATM machines. Do we know what happen to that one that got stolen?

EWY: Yes. Police has cleared me of any wrong doing in that. As a matter fact I believe Allen was approved. These have proven in recent times to be much safer. Criminals stealing ATM machines like to pull them through the front wall of the building. Isn't that what happened on that?

YEAROUT: They may still be trying to get the money out.

PITTS: We will confine the discussion to the bench. This is something that we are beginning to do quite a bit of. I do not see anything different on this one on than anything else we have been doing.

PHILLIPS: What we have looked at before has always been some type of, at least I know the Board as well as some of the other subdivision has looked at it. Always wanted a little bit of landscaping here. There does not appear to be anything. It is a tight sight. There is still plenty of right of way landscaping on the code. Staff has done a great job of looking at these things ahead of time. I think we have all been through a learning curve.

ROGERS: Questions for staff? As stated in public interest paragraph the ATM is approaching into a platted building set back. But the applicant has began the process of vacating the setback. Mr. Yearout, by us approving this motion does that, how do we know that is something that is complied with? Is that something at a later date?

YEAROUT: They will not be able. The application to vacate the platted setback is already in process. They really will not be able to get the building permit until that is completed as well. There is about three or four different actions that are occurring. BZA variance for the setback encroachment, Administrative Adjustments to the C.U.P.,

a vacation of the platted setback line. All those things are in process on this thing. They will come to completion before they will get the building permits.

EWY: And this is the finally action. All preceding action contented on this Board approving this request. So although, the vacation setback, and the C.U.P. Administrative Adjustments have been completed to date, they all contain the contingent that the BZA approved the front yard setback variance. All of these things are pretty much tied together.

MOTION: Rogers moved and Phillips seconded that the Board accept the findings of fact as set forth in the Secretary's Report, and that the Board find that the five conditions set out in Section 2.12.590.B of the code as necessary for the granting of a variance have been found to exist, and the variance be granted subject to conditions set out in the Secretary's Report.

MOTION: Carries 4-0.

The official action of the Board is reflected in the adoption of Resolution No. BZA 30-98, which includes the following conditions of approval:

BZA RESOLUTION NO. 30-98

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front yard setback shall be modified on the east side of the property for the placement of an ATM by the 15 foot by 20 foot dimensions shown on the site plan. The ATM shall be constructed in conformance with the site plan approved by the Board of Zoning Appeals.
2. The applicant shall obtain all local permits necessary to construct the ATM and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.
4. **J.R. Cox for Office of Central Inspection.** I have five reports. Going to start clearing out the USD #259 towers. These first five are all from 35 feet to 100 feet to allow communications towers at that height. BZA14-96 which is 8103 E. Gilbert is not in compliance has one missing tree which was required. One of the trees they supplied did not appear to make it. They will be notified and required to replace both trees. BZA 17-96, is 3143 South Millwood is in compliance. BZA18-96, which is 3030 South Osage that BZA is in compliance. BZA 19-96, which is 2700 S. Washington, the tower

is in compliance, everything about the tower is in compliance, however there is a issue about screening, I am going to have to resolve. I am not at all sure it is in compliance as far as screening. Since I do not have any documentation what the screening is suppose to be, I can not answer that at this point and time. I hope to have that by the next meeting. If it is what I know what screening to be, it is not in compliance. They will be required to screen if something different was approved then it may very will be in compliance. BZA 20-96, which is Clark Elementary School at 1700 Cottonwood where I went to elementary school is in compliance. I have no further report. Any questions?

PITTS: Any questions?

YEAROUT: Minor things, we are behind in some minutes. No that we have gone through the cycle of Sondra leaving and Lisa. We are going to try to get those caught up and bring them to the board. There are no cases pending. All of the cases have been heard have passed through the time line when they have had standing to appeal to court. So there is nothing really threatened by that. We will get those to you. There is soon to begin some amendments, we are going to open up the zoning codes for some clean up amendments. So if there is anything at all that you feel out to be addressed within that, now is the time to get word to us so it can get put on the table. I do not know what protocol in the passed about offering the board the opportunity to have input on that but I do not think it is out of the order at all. Part of your function is to, I think a little bit the sign case today, staff knew where we were on that we were swimming against the current a little bit. We felt that we needed to make the point as the board saw as fit as well. That it is a larger issue than just one business owner down in that area. I have always believed that the function of the zoning board is to make the zoning rules work within what makes common sense. But if the issue is much larger than a variance you fix the problem by amending the code. You do not continue to just variance and exception or whatever it is that you do. We are working with CPO, we have some time schedules here that have caused us to have to get some staff reports out a little faster so that we do not get the chance to do the research on them as much as we would like to. In order for them to be able to be to you by the CPO, I noticed today in turn, we are not getting the CPO comments back in a very good interim either. Cause a couple of them we did not get until late. Please bear with us while Rose begins to learn the process.

Adjourned 4:35 p.m.